

Petitioner's nursing employment history continued:

03/11 - 09/11	Patient Care Coordinator	Allstar Hospice Arlington, Texas
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5. On January 28, 2011, Petitioner was issued the sanction of Suspend Probate by the Texas Board of Nursing. A copy of the January 28, 2011, Order, Findings of Fact, and Conclusions of Law, is attached and incorporated, by reference, as a part of this Order.
6. On December 18, 2012, Petitioner's license to practice vocational nursing in the State of Texas was Revoked by the Texas Board of Nursing. A copy of the December 18, 2012, Order of the Board and Formal Charges is attached and incorporated, by reference, as a part of this Order
7. On or about June 15, 2015, Petitioner submitted a Petition for Reinstatement of License to practice vocational nursing in the State of Texas.
8. Petitioner presented the following in support of petition:
 - 8.1. Letter of Support from Andrew Murray, SFC, US Army, stating it was a great pleasure to write a letter on behalf of Petitioner. Mr. Murray states Petitioner was a dedicated volunteer in multiple organizations in their community. Mr. Murray describes Petitioner as multitasking, delightful, energetic, focused, and trust worthy. Mr. Murray states during his three-year tenure as Center Commander of the US Army Medical Recruiting Center in Dallas, Petitioner assisted in multiple events and staff functions. Mr. Murray states the Army staff and faculty enjoyed Petitioner's selfless-service, generosity, and patriotism immensely. Mr. Murray also describes Petitioner as being dedicated, with a good work ethic, and humble demeanor making her an asset to all with whom she makes contact. Mr. Murray states Petitioner's spirt, patience, honesty and, professionalism, are characteristics that can't be taught. In summary, he offers a most enthusiastic recommendation for Petitioner, noting her values and character will be a great addition while enhancing the Nursing work force tremendously.
 - 8.2 Letter of Support dated May 29, 2015 from June Robertson, Euless, Texas stating she worked with Petitioner at All Star Hospice for approximately 6 years and was always impressed with the care Petitioner gave. Ms. Robertson states she hears things from patients that other workers did, but has never saw nor heard of a flaw in Petitioners work, nor a complaint of any kind by the patients or the family members. Ms. Robertson states there were wrong choices and decisions made by Petitioner and her family that she knows Petitioner regrets. Ms. Robertson also feels that Petitioner has paid for those errors in the past. Ms. Robertson is hopeful and prayerful that the Texas Board of Nursing will reinstate this excellent and caring nurse.

- 8.3 Letter of Support dated June 1, 2015 from Dr. F. Alan Pickering stating he has had a prolonged relationship with Petitioner for 6 years while involved with hospice care. Mr. Pickering describes Petitioner to be of impeccable character, a devoted worker, compassionate, and sensitive with her patients, and professional in her nursing role. Mr. Pickering considers Petitioner an excellent and superb professional with whom it was his privilege to work with. Mr. Pickering states Petitioner is an asset to the nursing profession and he would highly recommend her to any position relative to her qualifications.
- 8.4 Documentation of the required continuing education contact hours

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.
2. Pursuant to Section 301.467, Texas Occupations Code, the Board may refuse to issue or renew a license, and may set a reasonable period that must lapse before reapplication. Pursuant to 22 TEX. ADMIN. CODE §213.26, the Board may impose reasonable conditions that a Petitioner must satisfy before reissuance of an unrestricted license.

ORDER

IT IS THEREFORE AGREED, subject to ratification by the Texas Board of Nursing, that the petition of LAKESHIA MARIE GARDERE, Vocational Nurse License Number 204147, to practice nursing in the state of Texas, be and the same is hereby GRANTED, AND SUBJECT TO THE FOLLOWING STIPULATIONS SO LONG AS THE PETITIONER complies in all respects with the Nursing Practice Act, Texas Occupations Code, §301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.1 *et. seq.* and the stipulations contained in this Order:

IT IS FURTHER AGREED and ORDERED that, while under the terms of this Order, this Order SHALL apply to any and all future licenses issued to Petitioner to practice nursing in the State of Texas.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Petitioner's nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

IT IS FURTHER AGREED and ORDERED that while Petitioner's license(s) is/are encumbered by this Order, Petitioner may not work outside the State of Texas pursuant to a nurse licensure compact privilege without the written permission of the State of Texas and the Board of Nursing in the party state where Petitioner wishes to work.

(1) PETITIONER SHALL pay all re-registration fees and be issued a license to practice nursing in the State of Texas, which shall bear the appropriate notation. Said license issued to LAKESHIA GARDERE shall be subject to the following agreed post-licensure probation conditions:

(2) PETITIONER SHALL, within one (1) year of relicensure, successfully complete a course in Texas nursing jurisprudence and ethics. PETITIONER SHALL obtain Board approval of the course prior to enrollment only if the course is not being offered by a pre-approved provider. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience shall include nurses. It shall be a minimum of six (6) hours in length. The course's content shall include the Nursing Practice Act, standards of practice, documentation of care, principles of nursing ethics, confidentiality, professional boundaries, and the Board's Disciplinary Sanction Policies regarding: Sexual Misconduct; Fraud, Theft and Deception; Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. PETITIONER SHALL CAUSE the sponsoring institution to submit a Verification of Course Completion form, provided by the Board, to the Office of the Board to verify PETITIONER'S successful completion of the course. This course shall be taken in addition to any other courses stipulated in this Order, if any, and in addition to any continuing education requirements the Board has for relicensure.

Board-approved courses may be found at the following Board website address:

<http://www.bon.texas.gov/disciplinaryaction/stipscourses.html>

(3) RESPONDENT SHALL, within one (1) year of relicensure, successfully complete the course "Sharpening Critical Thinking Skills," a 3.6 contact hour online program provided by the National Council of State Boards of Nursing (NCSBN) Learning Extension. In order to receive credit for completion of this program, RESPONDENT SHALL SUBMIT the continuing education certificate of completion for this program to the Board's office, to attention Monitoring. This course is to be taken in addition to any continuing education requirements the Board may have for relicensure. *Board-approved courses may be found at the following Board website address: <http://www.bon.texas.gov/compliance>.*

IT IS FURTHER AGREED, SHOULD PETITIONER CHOOSE TO WORK AS A NURSE IN TEXAS, PETITIONER WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING A MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING PROBATION CONDITIONS FOR 2 YEARS OF EMPLOYMENT. THE LENGTH OF THE PROBATION PERIOD WILL BE EXTENDED UNTIL SUCH 24 MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A REGISTERED NURSE (RN) OR A VOCATIONAL NURSE (LVN) LICENSE, AS APPROPRIATE, WILL NOT APPLY TO THIS STIPULATION PERIOD:

(4) PETITIONER SHALL notify all future employers in nursing of this order of the Board and the stipulations on Petitioner's license(s). PETITIONER SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each future employer prior to accepting an offer of employment.

(5) PETITIONER SHALL cause each future employer to submit the Notification of Employment form, which provided to the PETITIONER by the Board, to the Board's office within five (5) days of employment as a nurse.

(6) PETITIONER SHALL be supervised by a Registered Nurse, if licensed as Registered Nurse, or by a licensed Vocational Nurse or a Registered Nurse, if licensed as Licensed Vocational Nurse, who is on the premises. The supervising nurse is not required to be on the same unit or ward as PETITIONER, but should be on the facility grounds and readily available to provided assistance and intervention if necessary. The supervising nurse shall have a minimum of two (2) years experience in the same or similar practice setting to which the PETITIONER is currently working. PETITIONER SHALL work only regularly assigned, identified and predetermined unit(s). PETITIONER SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. PETITIONER SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(7) PETITIONER SHALL CAUSE each employer to submit, on forms provided to the PETITIONER by the Board, periodic reports as to PETITIONER'S capability to practice nursing. These reports shall be completed by the nurse who supervises the PETITIONER. These reports shall be submitted by the supervising nurse to the office of the Board at the end of each three (3) month period for two (2) year(s) of employment as a nurse.

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, all encumbrances will be removed from PETITIONER'S license(s) to practice nursing in the State of Texas and PETITIONER may be eligible for nurse licensure compact privileges, if any.

PETITIONER'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Reinstatement Agreed Order. I waive representation by counsel. I certify that my past behavior, except as disclosed in my Petition for Reinstatement of Licensure, has been in conformity with the Board's professional character rule. I have provided the Board with complete and accurate documentation of my past behavior in violation of the penal law of any jurisdiction which was disposed of through any procedure short of convictions, such as: conditional discharge, deferred adjudication or dismissal. I have no criminal prosecution pending in any jurisdiction.

I have reviewed this Order. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and any conditions of said Order. I waive judicial review of this Order. I understand that this Order is subject to ratification by the Board. When this Order is ratified, the terms of this Order become effective, and a copy will be mailed to me. I agree to inform the Board of any other fact or event that could constitute a ground for denial of licensure prior to reinstating my license to practice vocational nursing in the state of Texas. I understand that if I fail to comply with all terms and conditions of this Order, my license(s) to practice nursing in the State of Texas will be revoked, as a consequence of my noncompliance.

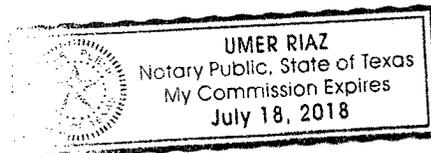
Signed this 1st day of April, 2016.

Lakeshia Marie Gardere
LAKESHIA MARIE GARDERE, Petitioner

Sworn to and subscribed before me this 1st day of April, 2016.

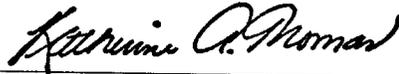
SEAL

U. D. Riaz
Notary Public in and for the State of Texas



WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Reinstatement Agreed Order that was signed on the 1st day of April, 2016, by LAKESHIA MARIE GARDERE, Vocational Nurse License Number 204147, and said Order is final.

Effective this 13th day of September, 2016.



Katherine A. Thomas, MN, RN, FAAN
Executive Director on behalf
of said Board

IN THE MATTER OF
PERMANENT VOCATIONAL NURSE
LICENSE NUMBER 204147
ISSUED TO
LAKESHIA MARIE GARDERE

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BEFORE THE TEXAS
BOARD OF NURSING
ELIGIBILITY AND
DISCIPLINARY COMMITTEE

ORDER OF THE BOARD

TO: LAKESHIA MARIE GARDERE
1500 SCOTS WOOD DR
ARLINGTON, TX 76015

During open meeting held in Austin, Texas, on December 18, 2012, the Texas Board of Nursing Eligibility and Disciplinary Committee (hereinafter "Committee") heard the above-styled case, based on the failure of the Respondent to appear as required by 22 TEX. ADMIN. CODE Ch. 213.

The Committee finds that notice of the facts or conduct alleged to warrant disciplinary action has been provided to Respondent in accordance with Texas Government Code § 2001.054(c) and Respondent has been given an opportunity to show compliance with all the requirements of the Nursing Practice Act, Chapter 301 of the Texas Occupations Code, for retention of Respondent's license(s) to practice nursing in the State of Texas.

The Committee finds that the Formal Charges were properly initiated and filed in accordance with section 301.458, Texas Occupations Code.

The Committee finds that after proper and timely Notice regarding the violations alleged in the Formal Charges was given to Respondent in this matter, Respondent has failed to appear in accordance with 22 TEX. ADMIN. CODE Ch. 213.

The Committee finds that the Board is authorized to enter a default order pursuant to Texas Government Code § 2001.056.

The Committee, after review and due consideration, adopts the proposed findings of fact and conclusions of law as stated in the Formal Charges which are attached hereto and incorporated by



Executive Director of the Board
Patricia C. Thomas
is on file or is of record in the offices of the
Texas Board of Nursing

reference for all purposes and the Staff's recommended sanction of revocation by default. This Order will be properly served on all parties and all parties will be given an opportunity to file a motion for rehearing [22 TEX. ADMIN.CODE § 213.16(j)]. All parties have a right to judicial review of this Order.

All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

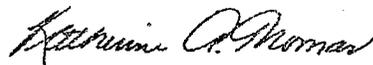
NOW, THEREFORE, IT IS ORDERED that Permanent Vocational Nurse License Number 204147, previously issued to LAKESHIA MARIE GARDERE, to practice nursing in the State of Texas be, and the same is/are hereby, REVOKED.

IT IS FURTHER ORDERED that this Order SHALL be applicable to Respondent's nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

Entered this 18th day of December, 2012.

TEXAS BOARD OF NURSING

BY:



KATHERINE A. THOMAS, MN, RN, FAAN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

Attachment: Formal Charge filed June 28, 2012.

Re: Permanent Vocational Nurse License Number 204147
Issued to LAKESHIA MARIE GARDERE
DEFAULT ORDER - REVOKE

CERTIFICATE OF SERVICE

I hereby certify that on the ___ day of December, 2012, a true and correct copy of the foregoing DEFAULT ORDER was served and addressed to the following person(s), as follows:

Via USPS Certified Mail, Return Receipt Requested

LAKESHIA MARIE GARDERE
1500 SCOTS WOOD DR
ARLINGTON, TX 76015



BY:

KATHERINE A. THOMAS, MN, RN, FAAN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

In the Matter of Permanent License § BEFORE THE TEXAS
Number 204147, Issued to §
LAKESHIA MARIE GARDERE, Respondent § BOARD OF NURSING

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, LAKESHIA MARIE GARDERE, is a Vocational Nurse holding license number 204147, which is in current status at the time of this pleading.

Written notice of the facts and conduct alleged to warrant adverse licensure action was sent to Respondent at Respondent's address of record and Respondent was given opportunity to show compliance with all requirements of the law for retention of the license prior to commencement of this proceeding.

CHARGE I.

On or about March 15, 2011, Respondent failed to comply with the Order of the Board and Proposal for Decision issued to her on January 28, 2011, by the Texas Board of Nursing. Non-compliance is the result of Respondent's failure to comply with Stipulation Number Three (3) of the Order which states, in pertinent part:

(3) RESPONDENT SHALL pay a monetary fine in the amount of two hundred fifty dollars (\$250.00). RESPONDENT SHALL pay this fine within forty-five (45) days of entry of this Order....

A copy of the January 28, 2011, Order of the Board and Proposal for Decision, Findings of Fact and Conclusions of Law, is attached and incorporated, by reference, as part of this pleading.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(1) and (10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.12(11)(B).

CHARGE II.

On or about January 29, 2012, Respondent failed to comply with the Order of the Board and Proposal for Decision issued to her on January 28, 2011, by the Texas Board of Nursing. Non-compliance is the result of Respondent's failure to comply with Stipulation Number Two (2) of the Order which states, in pertinent part:

(2) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete a course in Texas nursing jurisprudence and ethics....

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(1) and (10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.12(11)(B).

NOTICE IS GIVEN that staff will present evidence in support of the recommended disposition of up to and including revocation of Respondent's license to practice vocational nursing in the State of Texas pursuant to the Board's rules, 22 TEX. ADMIN. CODE §§ 213.27 - 213.33. Additionally, staff will seek to impose on Respondent the administrative costs of the proceeding pursuant to § 301.461, Texas Occupations Code. The cost of proceedings shall include, but is not limited to, the cost paid by the board to the State Office of Administrative Hearings and the Office of the Attorney General or other Board counsel for legal and investigative services, the cost of a court reporter and witnesses, reproduction of records, board staff time, travel, and expenses. These shall be in an amount of at least one thousand two hundred dollars (\$1200.00).

NOTICE IS GIVEN that all statutes and rules cited in these Charges are incorporated as part of this pleading and can be found at the Board's website, www.bon.state.tx.us.

NOTICE IS GIVEN that, based on the Formal Charges, the Board will rely on the Disciplinary Matrix, which can be found at www.bon.state.tx.us/disciplinaryaction/discp-matrix.html.

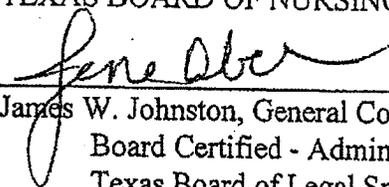
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CONTINUED ON NEXT PAGE.

NOTICE IS ALSO GIVEN that Respondent's past disciplinary history, as set out below and described in the Order which is attached and incorporated by reference as part of these charges, will be offered in support of the disposition recommended by staff: Agreed Order dated January 28, 2011.

Filed this 28th day of June, 2012.

TEXAS BOARD OF NURSING


James W. Johnston, General Counsel
Board Certified - Administrative Law
Texas Board of Legal Specialization
State Bar No. 10838300

Jena Abel, Assistant General Counsel
State Bar No. 24036103

Lance Robert Brenton, Assistant General Counsel
State Bar No. 24066924

John R. Griffith, Assistant General Counsel
State Bar No. 24079751

Robert Kyle Hensley, Assistant General Counsel
State Bar No. 50511847

Nikki Hopkins, Assistant General Counsel
State Bar No. 24052269

John F. Legris, Assistant General Counsel
State Bar No. 00785533

TEXAS BOARD OF NURSING
333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701
P: (512) 305-6824
F: (512) 305-8101 or (512)305-7401

Attachments: Agreed Order dated January 28, 2011.

DOCKET NUMBER 507-10-4467

IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 204147
ISSUED TO
LAKESHIA MARIE GARDERE

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

OPINION AND ORDER OF THE BOARD

TO: LAKESHIA MARIE GARDERE
1500 SCOTS WOOD DRIVE
ARLINGTON, TX 76015

ROY G. SCUDDAY
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701

At the regularly scheduled public meeting on January 27-28, 2011, the Texas Board of Nursing (Board) considered the following items: (1) The Proposal for Decision (PFD) regarding the above cited matter; (2) Staff's recommendation that the Board adopt the PFD regarding the vocational nursing license of Lakeshia Marie Gardere with changes; and (3) Respondent's recommendation to the Board regarding the PFD and order, if any.

The Board finds that after proper and timely notice was given, the above styled case was heard by an Administrative Law Judge (ALJ) who made and filed a PFD containing the ALJ's findings of facts and conclusions of law. The PFD was properly served on all parties and all parties were given an opportunity to file exceptions and replies as part of the record herein. No exceptions were filed by any party.

The Board, after review and due consideration of the PFD, Staff's recommendations, and Respondent's presentation during the open meeting, if any, adopts all of the findings of fact and conclusions of law of the ALJ contained in the PFD as if fully set out and separately stated herein, with the exception of Conclusion of Law Number 7,

which is not adopted by the Board because it is not a proper conclusion of law. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

Conclusion of Law Number 7

The Government Code §2001.058(e) authorizes the Board to change a finding of fact or conclusion of law made by the ALJ, or to vacate or modify an order issued by the ALJ if the Board determines that the ALJ did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions. The ALJ did not properly apply or interpret applicable law in this matter when he included his recommended sanction as a conclusion of law. A recommendation for a sanction is not a proper conclusion of law. An agency is the final decision maker regarding the imposition of sanctions. Once it has been determined that a violation of the law has occurred, the sanction is a matter for the agency's discretion. The choice of penalty is vested in the agency, not in the courts. The agency is charged by law with discretion to fix the penalty when it determines that the statute has been violated. Thus, the Board is not required to give presumptively binding effect to an ALJ's recommendation regarding sanctions in the same manner as with other findings of fact and conclusions of law. Further, the mere labeling of a recommended sanction as a conclusion of law or as a finding of fact does not change the effect of the ALJ's recommendation...[T]he Board, not the ALJ, is the decision maker concerning sanctions. See *Texas State Board of Dental Examiners vs. Brown*, 281 S.W. 3d 692 (Tex. App. - Corpus Christi 2009, pet. filed); *Sears vs. Tex. State Bd. of Dental Exam'rs*, 759 S.W.2d 748, 751 (Tex.App.-Austin 1988, no pet); *Firemen's & Policemen's Civil Serv. Comm'n vs. Brinkmeyer*, 662 S.W.2d 953, 956 (Tex.1984); *Granek vs. Tex. State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 781 (Tex.App.-Austin 2005, pet. denied). The Board rejects Conclusion of Law Number 7 because it is a recommended sanction and not a

proper conclusion of law. Further, the Board retains the authority to determine the final sanction in this matter. The Board believes that disciplinary action in this matter is warranted based upon the adopted Findings of Facts and Conclusions of Law Numbers 4 and 6. The Board agrees with the ALJ that the Respondent's license should be suspended and subject to probationary stipulations. However, the ALJ erred in applying applicable law and the Board's rules, written policies, and prior administrative decisions when he recommended that the imposition of such probationary stipulations should not limit the Respondent's practice. The Board finds that the Respondent's license should be suspended, that the suspension should be fully probated, and that probationary stipulations, including those that limit the Respondent's practice, should be imposed.

The Board's Disciplinary Guidelines for Criminal Conduct initially provide for the revocation of the Respondent's license because she received a deferred adjudication order less than three years ago for a felony offense involving a false report or statement. However, the Board agrees that the mitigating factors set forth in the adopted Findings of Fact support a probated suspension of the Respondent's license instead of a license revocation. While the Board agrees that these mitigating factors support a lesser disciplinary sanction, the Board does not agree that these factors eliminate the need for probationary stipulations that limit the Respondent's practice. The Board's Disciplinary Guidelines for Fraud, Theft, and Deception provide that the minimum allowed sanction for offenses involving fraud, deceit, or deception that results in harm or potential harm to another person will be the individual's removal from practice in an independent setting, supervised practice, employer reporting, and a punitive fine. Further, 22 Tex. Admin. Code §213.33(e)(6)(E) specifically authorizes the imposition of reasonable probationary stipulations, such as supervised practice, in matters involving the suspension of a license. Finally, the imposition of these probationary stipulations are consistent with the Board's

prior administrative decisions in disciplinary matters involving similar facts. As such, the Board finds that the imposition of probationary stipulations that limit the Respondent's practice, such as supervised practice and employer reporting, are appropriate and necessary in this matter.

IT IS THEREFORE ORDERED, that Vocational Nurse License Number 204147, previously issued to LAKESHIA MARIE GARDERE, to practice vocational nursing in Texas is hereby SUSPENDED for a period of one (1) year, with the suspension STAYED and Respondent is hereby placed on PROBATION for one (1) year with the following terms of probation:

IT IS FURTHER ORDERED that this Order SHALL be applicable to Respondent's nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

IT IS FURTHER ORDERED that while Respondent's license is encumbered by this order, the Respondent may not work outside the State of Texas pursuant to a nurse licensure compact privilege without the written permission of the Texas Board of Nursing and the Board of Nursing in the party state where Respondent wishes to work.

(1) RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Texas Occupations Code, §§301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.1 *et seq.* and this Order.

(2) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete a course in Texas nursing jurisprudence and ethics. RESPONDENT SHALL obtain Board approval of the course prior to enrollment only if the course is not being offered by a pre-approved provider. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience shall include

nurses. It shall be a minimum of six (6) hours in length. The course's content shall include the Nursing Practice Act, standards of practice, documentation of care, principles of nursing ethics, confidentiality, professional boundaries, and the Board's Disciplinary Sanction Policies regarding: Sexual Misconduct; Fraud, Theft and Deception; Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. RESPONDENT SHALL CAUSE the sponsoring institution to submit a Verification of Course Completion form, provided by the Board, to the Office of the Board to verify RESPONDENT'S successful completion of the course. This course shall be taken in addition to any other courses stipulated in this Order, if any, and in addition to any continuing education requirements the Board has for relicensure. *Board-approved courses may be found at the following Board website address:* <http://www.bon.state.tx.us/disciplinaryaction/stipscourses.html>.

(3) RESPONDENT SHALL pay a monetary fine in the amount of two hundred fifty dollars (\$250). RESPONDENT SHALL pay this fine within forty five (45) days of entry of this Order. Payment is to be made directly to the Texas Board of Nursing in the form of cashier's check or U.S. money order. Partial payments will not be accepted.

IT IS FURTHER ORDERED, SHOULD RESPONDENT CHOOSE TO WORK AS A NURSE IN TEXAS, RESPONDENT WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING A MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING STIPULATIONS FOR ONE (1) YEAR OF EMPLOYMENT. THE LENGTH OF THE STIPULATION PERIOD WILL BE EXTENDED UNTIL SUCH TWELVE (12) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A VOCATIONAL NURSE (LVN) LICENSE WILL NOT

APPLY TO THIS STIPULATION PERIOD:

(4) RESPONDENT SHALL notify each present employer in nursing of this Order of the Board and the stipulations on RESPONDENT'S license. RESPONDENT SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each present employer within five (5) days of receipt of this Order. RESPONDENT SHALL notify all future employers in nursing of this Order of the Board and the stipulations on RESPONDENT'S license. RESPONDENT SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each future employer prior to accepting an offer of employment.

(5) RESPONDENT SHALL CAUSE each present employer in nursing to submit the Notification of Employment form, which is provided to the RESPONDENT by the Board, to the Board's office within ten (10) days of receipt of this Order. RESPONDENT SHALL CAUSE each future employer to submit the Notification of Employment form, which is provided to the RESPONDENT by the Board, to the Board's office within five (5) days of employment as a nurse.

(6) For the duration of the stipulation period, RESPONDENT SHALL be supervised by a Registered or Vocational Nurse who is on the premises. The supervising nurse is not required to be on the same unit or ward as RESPONDENT, but should be on the facility grounds and readily available to provide assistance and intervention if necessary. The supervising nurse shall have a minimum of two (2) years experience in the same or similar practice setting to which the RESPONDENT is currently working. RESPONDENT SHALL work only regularly assigned, identified and predetermined unit(s). RESPONDENT SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. RESPONDENT SHALL NOT be

self-employed or contract for services. Multiple employers are prohibited.

(7) RESPONDENT SHALL CAUSE each employer to submit, on forms provided to the RESPONDENT by the Board, periodic reports as to RESPONDENT'S capability to practice nursing. These reports shall be completed by the nurse who supervises the RESPONDENT. These reports shall be submitted by the supervising nurse to the office of the Board at the end of each three (3) month period for one (1) year of employment as a nurse.

IT IS FURTHER ORDERED that if during the period of probation, an additional allegation, accusation, or petition is reported or filed against the Respondent's license, the probationary period shall not expire and shall automatically be extended until the allegation, accusation, or petition has been acted upon by the Board.

IT IS FURTHER ORDERED, that upon full compliance with the terms of this Order, all encumbrances will be removed from RESPONDENT'S license to practice nursing in the State of Texas and RESPONDENT shall be eligible for nurse licensure compact privileges, if any.



Entered this 28th day of January, 2011.

TEXAS BOARD OF NURSING



KATHERINE A. THOMAS, MN, RN
EXECUTIVE DIRECTOR FOR THE BOARD

Attachment: Proposal for Decision; Docket No. 507-10-4467 (September 28, 2010).

SOAH DOCKET NO. 507-10-4467

TEXAS BOARD OF NURSING, Petitioner	§	BEFORE THE STATE OFFICE
	§	
vs.	§	OF
	§	
LAKESHIA MARIE GARDERE, Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Board of Nursing (Staff/Board) brought action against Lakeshia Marie Gardere (Respondent) for violating TEX. OCC. CODE ANN. (Code) § 301.452 and 22 TEX. ADMIN. CODE (TAC) § 217.12, based on Respondent's deferred adjudication for Securing Execution of a Document by Deception. The proposal for decision finds that Respondent's Licensed Vocational Nurse (LVN) license should be suspended for a period of one year, but that the suspension should be fully probated.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened September 21, 2010, before ALJ Roy G. Scudday in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Staff was represented by R. Kyle Hensley, Assistant General Counsel. Respondent appeared on her own behalf. The record closed at the conclusion of the hearing.

Matters concerning notice and jurisdiction were undisputed. Those matters are set out in the Findings of Fact and Conclusions of Law.

II. DISCUSSION

A. Background

Respondent has been licensed in Texas as an LVN since 2006. On March 2, 2010, Staff sent Respondent a Notice of Formal Charges filed against her. On June 3, 2010, Staff sent Respondent its Notice of Hearing.

B. Evidence

Staff submitted multiple exhibits and the testimony of Bonnie Cone. Respondent testified on her own behalf.

1. Undisputed Facts

Respondent qualified for an LVN license in Louisiana in 2005, but was evacuated to Texas as a result of Hurricane Katrina. While in Texas, Respondent was receiving payments from the Federal Emergency Management Agency (FEMA) and food stamps from the State of Texas. On July 21, 2008, in Cause No. 1110936D in the 396th District Court of Tarrant County, Texas, Respondent entered a plea of guilty to the State Jail felony offense of Securing Execution of a Document by Deception in an amount greater than \$1,500 but less than \$20,000. Adjudication was deferred, and Respondent was placed on community supervision for a period of one year, and ordered to pay a fine of \$100 and court costs. On October 20, 2008, the period of community supervision was terminated and the charges were dismissed.¹

Prior to receiving the deferred adjudication, Respondent paid \$4,070 in restitution. Respondent has worked as a hospice nurse for Allstar Hospice since July 2006. Other than the 2008 matter, Respondent has no criminal history.

2. Respondent's Testimony

Respondent, a 33-year-old single mother of three, testified that she pled guilty based on her attorney's advice although she had not intended to fraudulently receive food stamps. She paid the restitution in full prior to being granted deferred adjudication. She testified that she has never had any problems with the law before or since this incident; she was clearly remorseful. In addition, Respondent testified that she has never received any complaints from her supervisors or her hospice charges, and is dedicated to her work.

¹ Bd. Ex. 5.

3. Bonnie Cone's Testimony

Ms. Cone has been a Registered Nurse for 20 years with experience in diverse areas including critical care, nurse education and regulation. As a Nurse Practicing Consultant for the Board, Ms. Cone assists the Enforcement and Legal Divisions with case reviews and testifies as an expert witness in State Office of Administrative Hearings (SOAH) hearings.

Ms. Cone testified that fraudulently securing food stamps is considered to be a crime of moral turpitude that reflects a lack of good professional character, and poses a threat to the public and the patients. She testified that, based on the Board's Disciplinary Matrix, the facts surrounding the criminal charges, and Respondent's obvious remorse, a probated suspension of Respondent's license with limitations was warranted. That sanction would preclude Respondent from practicing in an independent setting and would limit her practice to being under the supervision of a licensed LVN or Registered Nurse (RN).

C. Analysis

Code § 301.452(b)(3) provides that a person is subject to disciplinary action for "a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude." The Board rule at 22 TAC § 213.27(b)(3) provides that one of the factors to consider in evaluating good professional character in disciplinary matters is any "conviction for a felony or for a misdemeanor involving moral turpitude or order of probation with or without an adjudication of guilt for an offense that would be a felony or misdemeanor involving moral turpitude if guilt were adjudicated." The rule at 22 TAC § 213.28(b)(4)(A)(i) lists "False Report or Statement" as being an offense that directly relates to and affects the practice of nursing.

The Disciplinary Matrix of the Board found at 22 TAC § 213.33(b) provides that discipline for placement on deferred adjudication for a felony will be reviewed under the Board's Disciplinary Guidelines for Criminal Conduct. Those Guidelines provide that, for the crime of false report or statement involved in this case, the proper sanction, if the licensee is not on felony

probation, is to issue the license with stipulations. The Guidelines set forth on page 18 the reasoning for these sanctions as follows:

Offense Against Property that involves intentionally or knowingly making a false material representation to obtain money or property. Professional character is required in nursing and the nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings where all of the patient's property and valuables are accessible to the nurse and there would be constant opportunity to commit similar offenses as a nurse. Fraud and intent to deceive raise serious concerns about a person's professional character and whether the nurse can be trusted to respect a patient's property/possessions.

It is clear from the Board rules and Guidelines that Respondent's deferred adjudication is a basis for a probated suspension of her license with limitations. However, as stated in the Guidelines, each case must be considered on its own merits.

Respondent's offense was the result of an apparent failure to report FEMA payments in her application for food stamps, rather than a deliberate attempt to deceive. Respondent paid the full amount of restitution and the charges against her were dismissed well before the scheduled end of the community supervision period. She has no other criminal history, nor is there any record of complaints from her supervisors or hospice charges during the four years she has worked as a hospice nurse. Her unblemished history as a hospice nurse indicates that Staff's concern that her prior offense shows an inclination to steal from her patients is misplaced. In addition, her accessibility to patients' property and possessions would not offer an opportunity to commit an offense similar to the one to which she pled guilty, which offense was in no way related to patient care or theft from patients.

III. RECOMMENDATION

Based upon the above discussion, the ALJ recommends that Respondent's LVN license be suspended for a period of one year, but that the suspension be probated subject to such

conditions as required by the Board, which conditions should not include limitations on her practice.

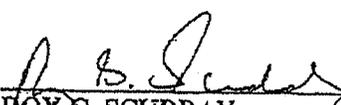
IV. FINDINGS OF FACT

1. Lakeshia Marie Gardere (Respondent) has been licensed as a Licensed Vocational Nurse (LVN) by the Texas Board of Nursing (Staff/Board) since 2006.
2. On March 2, 2010, Staff sent Respondent a Notice of Formal Charges filed against her.
3. On June 3, 2010, Staff mailed its Notice of Hearing to Respondent.
4. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted..
5. The hearing convened September 21, 2010, in the William P. Clements Building, 300 West 15th Street, Austin, Texas.
6. On July 21, 2008, in Cause No. 1110936D in the 396th District Court of Tarrant County, Texas, Respondent entered a plea of Guilty to the State Jail felony offense of Securing Execution of a Document by Deception in an amount greater than \$1,500 but less than \$20,000. Adjudication was deferred, and Respondent was placed on community supervision for a period of one year, ordered to pay a fine of \$100 and court costs.
7. On October 20, 2008, Respondent's period of community supervision was terminated and the charges against her were dismissed.
8. Respondent paid \$4,070 of restitution prior to the deferred adjudication proceedings, and the charges against her were dismissed well before the scheduled end of the community supervision period.
9. Respondent has no other criminal history, nor is there any record of complaints from her supervisors or hospice charges during the four years she has worked as a hospice nurse.
10. Respondent's accessibility to patients' property and possessions would not offer an opportunity to commit an offense similar to the one to which she pled guilty, which offense was in no way related to patient care or theft from patients.

V. CONCLUSIONS OF LAW

1. The Texas Board of Nursing (Board) has jurisdiction over this matter pursuant to TEX. OCC. CODE ANN. (Code) ch. 301.
2. The State Office of Administrative Hearings has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Notice of the hearing on the merits was provided as required by Code § 301.454 and by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Respondent is subject to disciplinary action by the Board pursuant to Code § 301.452(b)(3).
5. Staff had the burden of proof by a preponderance of the evidence.
6. Based on Findings Nos. 6-10, Staff proved that Respondent's previous criminal conduct supports the probated suspension of her license pursuant to 22 TEX. ADMIN. CODE §§ 213.27 and 28.
7. Based upon Findings of Fact Nos. 6-10 and Conclusion of Law No. 6, the Board should suspend Respondent's LVN license for a period of one year, but fully probate the suspension subject to such conditions as required by the Board, which conditions should not include limitations on her practice.

SIGNED September 28, 2010.



ROY G. SCUDDAY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS